

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES MAXWELL WORTHIN
BERESTOFF,

Plaintiff,

v.

KING COUNTY DEPARTMENT OF
PUBLIC HEALTH, et al.,

Defendants.

CASE NO. 2:16-CV-01159-RAJ-BAT

REPORT AND
RECOMMENDATION ON
PLAINTIFF'S MOTION FOR
ORDER OF IMMEDIATE MEDICAL
CARE

Plaintiff James M. W. Berestoff, a King County Jail prisoner proceeding in this civil rights action *pro se*, moves the Court for an order directing King County Correctional Facility ("KCCF") Jail Health Staff to send him to Harborview Medical Center ("HMC") for emergency dialysis. Dkt. 18. The Court construes the motion as a motion for injunctive relief, and for the reasons discussed below, recommends the motion be **DENIED**.

Plaintiff contends the Court should grant his motion because he fears retaliation by prison staff because he filed the complaint in this action; KCCF and HMC have a good "working relationship"; and plaintiff has a documented, serious need for dialysis. *Id.* The motion should be denied for several reasons. First, although plaintiff seeks an "order of immediate medical care," there is no indication he has been denied dialysis. Rather, plaintiff alleges that he refused

1 dialysis at the KCCF facility “as a protest about unfair treatment,” and he would only accept
 2 treatment at HMC. Dkt. 14 at 1. But there is no evidence to suggest that plaintiff’s ability to get
 3 dialysis depends on the Court’s granting of his motion. In short, plaintiff’s perceived emergency
 4 is one of his own making. Second, plaintiff has indicated he will be out of custody by September
 5 1, 2016. Dkt. 17 at 1. At that time, the government will no longer be responsible for providing
 6 plaintiff’s medical care, and he is free to seek care at the location of his choosing. Finally,
 7 plaintiff offers nothing to demonstrate that retaliation for filing his complaint is imminent, or
 8 even more than merely speculative.

9 Accordingly, it is hereby **RECOMMENDED**:

- 10 1. Plaintiff’s Motion for Order of Immediate Medical Care, Dkt. 18, be **DENIED**.
- 11 2. The Clerk shall send copies of this Order to plaintiff.
- 12 3. Any objections to this Recommendation must be filed no later than **September**
 13 **13, 2016**. The Clerk should note the matter for Wednesday, **September 14, 2016**, as ready for
 14 the District Judge’s consideration if no objection is filed. If plaintiff files an objection, he must
 15 note the matter for the Court’s consideration 14 days from the date the objection is filed.
 16 Objections shall not exceed eight (8) pages. The failure to timely object may affect the right to
 17 appeal.

18 DATED this 30th day of August, 2016.

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21 BRIAN A. TSUCHIDA
 22 United States Magistrate Judge
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